

REMARKS/ARGUMENTS

After the foregoing amendment, claims 25, 27-32, 34-36 and 38 are currently pending in this Application. Claims 25, 29, 32, 36 and 38 are amended in the present Reply.

35 U.S.C. §112

The Examiner rejected claims 25, 29, 32, 36 and 38 under 35 U.S.C. §112, first paragraph. Claims 25, 29, 32, 36 and 38 are amended and the Applicants respectfully request withdrawal of the 35 U.S.C. §112 rejection.

35 U.S.C. §103

The Examiner rejected claims 25, 27-32, 34-36 and 38 under 35 U.S.C. §103(a) as being unpatentable over a combination of four different references – Lieshout et al. (US Publication No. 2002/0094833) in view of Hwang et al. (US Publication No. 2002/0173314), Fauconnier et al. (US Publication No. 2002/0025820) and Terry et al. (US Publication No. 2003/0016641).

As has been argued persuasively to the Examiner before, Lieshout et al., paragraph 0035 refers to the SRNC requesting resource information for a UE from

the DRNC. Paragraph 0042 refers to the SRNC sending power regulation information to the DRNC with respect to a user. Neither of these paragraphs or Figures 2 or 3 disclose the requesting of any common measurements by the DRNC or sending of user measurements from the SRNC to the DRNC. Paragraph 0035 refers only to the SRNC requesting resources from the DRNC and not the DRNC requesting common measurements from the SRNC, let alone the common measurements including received total wideband power, load and/or global positioning system (GPS) timing information. Paragraph 42 does not refer to sending user measurements. The SRNC may use BLER to derive the power offset, but the power offset is not a user measurement. Since the DRNC does not have access to the user measurements, the SRNC needs to determine the FACH power offset for the user as the DRNC cannot do it. Accordingly, the Lieshout et al. reference simply does not disclose, teach, or suggest the elements as claimed in the present application.

With respect to Fauconnier et al., paragraph 109 merely refers to a time reference that is available being obtained by GPS-type receivers. However, the mere mention of a time reference being available by a GPS-type receiver does not at all relate to a common measurement or request for a common measurement. Indeed, there is no disclosure, teaching or suggestion in the Fauconnier et al. reference of any common measurements being requested, let alone those common

measurements being received total wideband power, load and/or global positioning system (GPS) timing information. Furthermore, there is no disclosure, teaching or suggestion in either Lieshout et al. or Fauconnier et al. of sending user measurements such as RSCP or ISCP, nor utilizing these measurements to establish radio resources for a particular user.

The only measurement sent from the SRNC to the DRNC in either Leishout or Fauconnier is timing adjustment, which is essentially an adjustment. Accordingly, neither reference discloses requesting common measurements that include received total wideband power, load and global positioning system (GPS) timing information, or transmitting user measurements, such as RSCP and ISCP.

The Hwang reference discloses a method for attempting to control congestion conditions in a wireless system. A second controller interprets a report from a first controller in an attempt to alleviate congestion. The second controller receives a report regarding whether or not there is an "overload" condition, and may utilize congestion control techniques such as restricting dataflow, interfrequency or intersystem handover, or releasing radio bearers. Nowhere is it disclosed, taught or suggested in Hwang of utilizing CCPCH RSCP and ISCP measurements to establish radio resources for a particular user. The techniques referred to in Hwang are system level congestion control techniques and not directed toward establishing radio resources for a particular user.

The Terry reference discloses, from the UE perspective, the measuring of RSCP and ISCP. However, the disclosure is relating to the UE's measuring of these values and not directed toward an RNC's utilization of CCPCH RSCP and ISCP measurements to establish radio resources for a particular user, or RNCs exchanging CCPCH RSCP and ISCP measurements.

None of the cited references, whether taken alone or in any combination with one another disclose, teach or suggest what is claimed in the Applicants' present claims. An obviousness rejection cannot be sustained where the prior art does not suggest the claimed configuration. See *Ex Parte Katoh et al*, Appeal 20071460, Decided May 29, 2007 (BPAI 2007). Furthermore, rejections on obviousness grounds must be supported with articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *KSR International Co v. Teleflex Inc.*, 550 U.S. 398, ___, 82 U.S.P.Q. 2d 1385, 1396 (U.S. 2007).

The Examiner is attempting to string together numerous references that include bits and pieces of what is in the Applicants' claims. Then, the Examiner proceeds by engaging in impermissible hindsight from the Applicants' disclosure in order to interpret the bits and pieces as rendering the Applicants' claims obvious. It is well established law that hindsight may not be utilized by the Examiner when rejecting claims under Examination. "We find no suggestion to combine the teachings and suggestions . . . as advanced by the Examiner, except from using

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Appellants' invention as a template through a hindsight reconstruction of Appellants' claims." *Ex Parte Crawford et al*, Appeal 20062429, Decided May 30, 2007 (BPAI 2007).

Accordingly, the Applicants' claims, (i.e., claims 25, 27-32, 34-36 and 38), are patentable over the Lieshout, Hwang, Fauconnier and Terry references, whether taken alone or in any combination with one another. Accordingly, the Applicants' respectfully request withdrawal of the 35 U.S.C. §103 rejections.

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Conclusion

If the Examiner believes that any additional minor formal matters need to be addressed in order to place this application in condition for allowance, or that a telephonic interview will help to materially advance the prosecution of this application, the Examiner is invited to contact the undersigned by telephone at the Examiner's convenience.

In view of the foregoing remarks, Applicants respectfully submit that the present application is in condition for allowance and a notice to that effect is respectfully requested.

Respectfully submitted,

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